HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 10673 OF 2006

DATED: 9.8.2006

Between:

N.C. Shetty, Managing Director, Fabsun
Engineering Pvt. Limited, Ananthapur

… Petitioner

and

The Andhra Pradesh Industrial Development
Corporation and another

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 10673 OF 2006

ORAL ORDER:

The petitioner assails the action of the 1st respondent in bringing the properties of Fabsun Engineering Private Limited (Ananthapur Mulberry Silks Limited) [for short 'Fabson'] including the land, plant and machinery of the said unit, for sale and confirming the sale in favour of the 2nd respondent pursuant to the auction held on 9.11.2005. The petitioner is the Managing Director of Fabsun.

Relevant facts:

The 1st respondent-the Andhra Pradesh Industrial Development Corporation (for short 'the Corporation') and the A.P. State Finance Corporation (for short 'APSFC') sanctioned a term loan to a unit at Anantapur called "Ananthapur Mulberry Silks Limited" in the year 1990. The unit became financially unsound and had defaulted on the instalments of the term loan advanced by the 1st respondent-

APIDC and the APSFC. Consequently the 1st respondent-Corporation took possession of the unit and issued an advertisement calling for tenders for the purpose of sale on several dates during the year 1995-1996. Fabson purchased the unit of Ananthapur Mulberry Silks Limited, sold by the 1st respondent pursuant to exercise of power under Section 29 of the State Finance Corporation Act, 1951 (for short 'the Act') for Rs.52,00,000/- on being the highest bidder at the public auction. The board of the 1st respondent approved the sale in favour of Fabsun on specified terms; inter alia the terms were that 35% of the sale consideration i.e. Rs.18.20 lakhs must be deposited within three months from 1.8.1996 by Fabsun and the balance 65% would be treated as a loan payable in 8 equal quarterly instalments to the 1st respondent and APSFC. The first instalment of the loan component shall be paid after 9 months from 1.8.1996 and the balance instalments are payable every quarter thereafter; interest at 20% per annum plus interest and tax is chargeable on the loan component. On 12.9.1996, the 1st respondent's board communicated confirmation of sale in favour of Fabsun, and on 17.12.1996, Fabsun took possession of the assets of Ananthapur Mulberry Silks Limited.

Fabsun defaulted in payment of the instalments to the 1st respondent. Therefore, on 22.9.1998, the 1st respondent issued a Recall-cum-Sale notice calling upon Fabson to pay the amounts due to the 1st respondent within the stipulated time. There was no response from Fabson. Another notice was issued on 5.5.1999 calling upon Fabsun to pay the amount due to the 1st respondent within the time

stipulated therein, duly intimating Fabsun that if the amount were not paid as stipulated, action would be initiated under Section 29 of the Act.

Fabsun, instead of paying up in accordance with the 1st respondent's notice dated 5.5.1999, filed O.S.No.131 of 2001 on the file of the 14th Additional Chief Judge, City Civil Court, Hyderabad (FTC) against the 1st respondent and the APSFC, seeking recovery of the amounts paid by it towards sale consideration to the 1st respondent and the APSFC along with certain other amounts coming to Rs.91,62,092.50 ps. The suit was filed by Fabsun contending that assets were sold to it without disclosing the attachment order passed in a suit instituted against it by a third party and that certain other amounts due from the unit to certain governmental agencies were not also disclosed by the 1st respondent and the APSFC. The civil court dismissed the suit by the judgment dated 25.8.2004. Aggrieved, Fabsun preferred CCCA No.24 of 2005, which is pending adjudication before this court.

After dismissal of O.S.No.131 of 2001, the 1st respondent issued a notice on 9.12.2004 to the petitioner directing him to pay Rs.71.45 lakhs due as on 30.11.2004, on or before 15.12.2004. There being no response, the first respondent issued another notice on 28.12.2004, calling the petitioner for a discussion on the payment of the amounts due.

On 28.1.2005, the 1st respondent issued another notice calling upon the petitioner to pay Rs.71.45 lakhs on or before 7.2.2005, failing which the 1st respondent would be constrained to initiate action under Section 29 of the Act. There being no response from the petitioner or Fabsun, the 1st respondent on

26.2.2005 issued a Recall-cum-Sale notice to the petitioner and Fabsun to pay Rs.71.45 lakhs, on or before 12.3.2005. On 2.4.2005, the petitioner addressed a letter to the 1st respondent, setting out the problems faced by the petitioner and requesting waiver of interest on the loan component and to accept the principal amount of Rs.16.80 lakhs.

Responding to the request of the petitioner, the Board of the 1st respondent on 25.6.2005 rejected the petitioner's request and recommended seizure of Fabsun, under Section 29 of the Act. To ensure smooth and unhindered seizure, the 1st respondent also sought police aid to seize the assets of the petitioner's company, by a letter dated 23.8.2005. The assets of Fabsun were seized on 24.8.2005 and on 23.10.2005 the 1st respondent issued an advertisement for sale of assets belonging to the petitioner's company by way of public auction.

The sale was held on 9.11.2005 and a final offer of Rs.47 lakhs was made by V.B.R. Sharma and Associates. The 1st respondent, however, rejected this bid as it was too low and issued another advertisement on 21.12.2005 for sale of assets of Fabsun. On 25.1.2006, the 1st respondent finalized the sale of land and buildings in favour of the 2nd respondent, on accepting his bid of Rs.69 lakhs and for sale of machinery in favour of one K. Harinath Reddy, on payment of Rs.19 lakhs. On 3.4.2006, the 1st respondent handed over possession of land and buildings to the 2nd respondent, pursuant to the acceptance of 2nd respondent's bid and on 4.4.2006, handed over possession of the machinery to K. Harinath Reddy, the

highest bidder therefor.

On 5.4.2006, the petitioner filed O.S.No.94 of 2006 on the file of the learned Principal Senior Civil Judge, Anantapur, against the respondents herein, assailing the proposed auction sale and seeking a permanent injunction restraining the respondents from interfering with his alleged possession and enjoyment of the plaint schedule land. No interim injunction was granted and the suit is pending.

On 11.5.2006, the 1st respondent executed a sale deed in favour of the 2nd respondent in respect of the land and buildings of Fabsun and on the same day, the 2nd respondent sold a portion of the land he had purchased in the public auction, to other individuals (who are not parties to this writ petition) and handed over possession of the portions so sold to those purchasers.

Petitioner assails the sale of the unit in favour of the 2nd respondent, by the 1st respondent, on two principal grounds.

Sri B. Purushotham Reddy, the learned counsel for the petitioner, firstly urged that so long as the sale of the unit which was confirmed in the petitioner's favour in 1996 continues, the 1st respondent is incompetent to again sell the same unit, exercising power under Section 29 of the Act. Secondly, it is contended, the 1st respondent being a

governmental undertaking should not indulge in frequent sales of industrial units.

Both the aforesaid contentions are misconceived and fundamentally do not present any legal principle. The sale in favour of the petitioner earlier in 1996 was on account of the default in the payment of the term loan availed by the unit i.e. Anantapur Mulberry Silks Limited. Pursuant to the terms and conditions of the sale in favour of the petitioner in 1996, the petitioner being the highest bidder, purchased Anantapur Mulberry Silks Limited for Rs.52 lakhs. He deposited 35% of the sale consideration and the balance was treated as a loan component advanced by the 1st respondent and APSFC. Fabsun is thus, after 1996, a borrower from the 1st respondent-Corporation and the APSFC for Rs.33.80 lakhs. For default in the repayment of this term loans, is liable in the same measure and to the procedural rigour of the provisions of the Act, as if it had obtained a loan from the APSFC initially, and for industrial or business purposes.

The conduct of the 1st respondent-Corporation in putting up Fabsun for sale and selling the unit to the 2nd respondent and others, pursuant to a process initiated under Section 29 of the Act, is thus

neither illegal, without jurisdiction nor irrational. The petitioner was issued several notices intimating the quantum of dues and the petitioner persistently failed to clear the dues. Fabsun was thus liable to be sold and has been so sold, in legitimate exercise of the powers under Section 29 of the Act.

The other contention urged by the learned counsel for the petitioner that the 1st respondent-Corporation cannot indulge in frequent sale of industrial units, ought to be rejected out of hand, as it posits no underlying legal principle.

For the aforesaid reasons, there are no merits. The writ petition is dismissed. The interim order dated 31.5.2006 stands dissolved. No order as to costs.

GODA RAGHURAM, J

Date: 9.8.2006
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